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Nuclear Power on Trial: The Acquittal of the Palo 13

SHARON M. LAKE

IN THE MIDST of a surprisingly heavy early spring snowstorm on Saturday, March 24, 1979, 13 men and women traveled to Iowa's only nuclear power plant—the Duane Arnold Energy Center, located approximately eight miles northwest of Cedar Rapids, near the small town of Palo—to commit an act of civil disobedience. Standing with their supporters on the road just outside the plant, the group's spokesperson read their prepared statement. "Today, we as a group of individual members of the Iowa Mobilization for Survival came together in a nonviolent, responsible, and peaceful effort to act on our belief that this nuclear plant is a grave danger to the lives and safety of the immediate community (Palo) and the rest of the state." The group's purpose, he read, was to block the entrance to the plant in order to "say with our persons that this plant should not be allowed to reopen now or ever." In closing, the group called on the owners of the plant, the Iowa Electric Light and Power Co., to "cease the operation of this dangerous plant" and join efforts to make the world "safe for us and for our children's children."¹

I am indebted to all the individuals who agreed to be interviewed for this article and shared their personal documents with me, especially Jean Hagen, Jack Kegel, and Skip Laitner. I thank Teresa Killeen, Sharon Romeo, and the *Annals of Iowa's* anonymous reviewers of for their guidance and feedback. I deeply appreciate the support I received from editor Marvin Bergman. Finally, I am grateful to the State Historical Society of Iowa for a SHSI Research Grant that supported my work on this article. Sadly, between the time I started the article and its publication, Palo 13 defendant Steve Marsden died unexpectedly. I dedicate this article to him.

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Frank Cordaro (right center in wool coat) reads the Palo 13's prepared statement. Four other members of the Palo 13 are visible in this photo: Jeffrey Morgan (in the white stocking cap); Jim Dubert (with the fur-lined hood); Steve Marsden (standing behind Dubert with stocking cap and hood); and Scott Morgan (in the beret to the right of Cordaro). Photo from Des Moines Catholic Worker Photo Archives.

After the statement was read, the entire group broke into song as the 13 individuals wearing yellow armbands said farewell to their supporters and walked toward a rope that had been stretched across the gravel road. As they approached the rope, the Linn County sheriff and Iowa Electric's security supervisor, who had been notified by the group several days earlier of their plans to trespass at the plant, warned them that if they chose to cross the rope, they would be arrested. "We were willing to make a deal that if the radiation didn't go past the rope, we wouldn't either," recalled one of the 13. Since no such deal was to be made, the 13 protestors linked arms, ducked under the rope, and sat on the snowy ground, forming a human barrier across the road. They continued singing.²

1. "Statement by Those Individuals Planning to Do Civil Disobedience Action at the Duane Arnold Energy Center," 3/24/1979, in author's possession.

2. Jean Hagen in "Iowa Anti-Nuclears," video by Dan Daly, in his possession, Iowa City; "13 Demonstrators Arrested at Palo Nuclear Generating Plant," *Cedar Rapids Gazette*, 3/25/1979; "Jailed as N-plant Reopens, Protesters Cite Nuclear Threat," *Des Moines Register*, 3/25/1979; Margaret "Maggie" Gilfoyle, telephone interview by author, 7/2/ 2016.



In the background, law enforcement officers look on and cameras record the action as protestors approach the boundary rope hand in hand. Protestors, from right to left, are Maggie Gilfoyle, Lucia Dryanski, Scott Morgan, and Frank Cordaro. Photo from Des Moines Catholic Worker Photo Archives.

The sheriff supervised the arrests as television cameras rolled, reporters took notes, and the 30 or so supporters who had accompanied the 13 called out words of encouragement. Two deputies approached each of the 13 protestors, placed them under arrest, and escorted them (if willing to walk) or dragged them (if not) to a waiting bus. The ten men and three women were transported to the Linn County jail in downtown Cedar Rapids and charged with criminal trespass. They refused to pay the \$150 bond, choosing instead to spend the night in jail. The following day, the front page of the *Sunday Cedar Rapids Gazette* featured three photographs of the demonstration and arrest.³

Sunday morning, the Palo 13, as they were now called, were handcuffed together for the trip to the courtroom for their arraignment. As they shuffled along in the unfamiliar restraints, other

3. "Palo Protest," *Cedar Rapids Gazette*, 3/25/1979.

inmates called out "No Nukes!" while one member of the Palo 13 couldn't resist breaking into a playful rendition of "Side by Side."⁴ The state charged each of the 13 individuals with one count of criminal trespass, a violation of Sections 716.7 and 716.8(1) of the *Iowa Criminal Code*.⁵ Through their attorney, they entered a plea of not guilty, requested a jury trial, and were released on their own recognizance.⁶

Three months later, a six-person jury returned its surprising verdict: not guilty. "I didn't expect to be acquitted," one defendant stated many years later. Or, as their attorney put it, the defendants

4. Jean Hagen, telephone interview by author, 4/16/2000; Jeffrey Morgan, interview by author, 4/10/2000, Iowa City. The Palo 13 are (in alphabetical order, with their residence at the time of the arrest): Frank Cordaro, Des Moines; Lucia Dryanski, Davenport; James Dubert, Ames; Margaret "Maggie" Gilfoyle, Iowa City; Greg Green, Iowa City; Jean Hagen, Iowa City; Richard Kramer, Ames; Alfred "Joe" Marron, Iowa City; Steve Marsden, Iowa City; Jeffrey Morgan, Iowa City; Scott Morgan, Iowa City; Joseph Ptak, Iowa City; and James Runyon, Rock Island, IL.

5. According to the *Iowa Criminal Code*, criminal trespass is defined as "entering or remaining upon or in property *without justification* (emphasis added) after being notified or requested to abstain from entering or to remove or vacate therefrom by the owner, lessee, or person in lawful possession, or the agent or employee of the owner, lessee, or person in lawful possession, or by any peace officer, magistrate, or public employee whose duty it is to supervise the use and maintenance of the property."

6. Frank Cordaro was the exception to this. He was kept in jail and cited with two counts of interfering with official acts (obstructing justice) for refusing to disclose his educational and occupational background to jail officials. Cordaro stood trial on those charges prior to the Palo 13's trial. Jack Kegel, who defended the Palo 13, represented him; the case was heard by Judge Thomas Koehler, who later heard the Palo 13 case. Cordaro explained in court that he had asked why he needed to provide the information and was not given a satisfactory response. Kegel proved that many inmates had not provided this information, but none had been charged with obstructing justice. After a six-person jury found Cordaro not guilty on the first count, the prosecution dismissed the second count. However, because Cordaro failed to rise for the judge during the trial, he was tried on contempt of court charges, found guilty, and sentenced to two days in jail. "State Rests Case in Cordaro Trial," *Cedar Rapids Gazette*, 5/15/1979; "Juror Felt Linn Jail Attendants 'Nit-picking,'" *Cedar Rapids Gazette*, 5/16/1979; "Cordaro Explains Action," *Cedar Rapids Gazette*, 5/23/1979; "Cordaro Sentenced in Contempt Case," *Cedar Rapids Gazette*, 5/25/1979. In a written statement to the court on his refusal to rise for the judge, Cordaro explained, "My refusal to stand is not meant to affront you as a person," but rather was a statement about the court system itself, which he viewed as "unjust." See "*Iowa v Cordaro*," *Via Pacis*, May/June 1979.

were “not a group that was concerned about a conviction looking bad on their record. They *expected* conviction.”⁷

The defendants’ expectations were well founded. Since 1977, thousands of nuclear power protestors from California to New Hampshire had been arrested and tried on charges similar to those faced by the Palo 13. The vast majority of those protestors had been found guilty or had been acquitted for technical reasons such as the filing of improper charges or the failure of the state to prove that a trespass had occurred.⁸ But the Palo 13 admitted that they had trespassed and chose not to pursue a technical defense, so the odds heavily favored a guilty verdict, especially because nuclear power was not a controversial issue in the local community, nor were any Linn County residents among the Palo 13.⁹

In addition, a significant political and cultural gap separated the jurors from the defendants. Although the members of both groups were white, of both genders, and, for the most part, from working or middle-class midwestern backgrounds, the similarities seemed to end there. The jurors were older than the defendants and appeared, to the defendants, to be “ordinary Iowans” like their parents.¹⁰ The jurors lived in rural Linn County and Cedar Rapids, a city of just over 100,000 inhabitants with a large working-class population, while a majority of the defendants had attended college and lived in the university town of Iowa City. The defendants believed that the jurors held mainstream values. “I mean, the jury read *Reader’s Digest*, and they believed in the law,” recalled one defendant.¹¹ The defendants, on the other hand, embraced radical social ideals: three were Catholic Workers; six

7. Hagen interview; Jack Kegel, telephone interview by author, 4/13/2000.

8. Steven Barkan, “Strategic, Tactical, and Organizational Dilemmas of the Protest Movement against Nuclear Power,” *Social Problems* 27 (October 1979), 19–37; Scott Kennedy, “Civil Disobedience and Legal Strategy,” *WIN Magazine*, 6/28/1979, 4–9, 15.

9. A small chapter of Des Moines-based Citizens United for Responsible Energy (CURE) existed in Cedar Rapids, and several Cedar Rapids residents were active in anti-nuclear organizations based in Iowa City.

10. Scott Morgan, “The Palo 13—A First-hand Account,” *Prairie Sun* 3, no. 20 (1979), 4, 7, 15; Susan Futrell, interview by author, 10/8/2015 and 12/20/2017, Iowa City.

11. Morgan interview.

belonged to the Iowa Socialist Party; two were frequent participants in Iowa Socialist Party events; one was a member of the Revolutionary Student Brigade at the University of Iowa; and one was a punk-rock artist. As their attorney stated, "To non-members of the counterculture, [they] didn't necessarily give the impression that they were reasonable."¹²

The remarkable acquittal could only mean, however, that the jury *did* believe that the defendants were reasonable. It meant that, after examining the evidence, the jury felt that the defendants had demonstrated the required statutory "justification" for their actions. But what kind of justification could they have had? For what was even more striking than the verdict itself was the fact that the jury had heard no evidence regarding the dangers of nuclear power. The judge had ruled, as had most judges in nuclear power protest cases, that evidence related to the dangers of nuclear power was irrelevant and could not be heard by the jury.¹³ The not guilty verdict, under these circumstances, was thought to be the first of its kind in the United States.¹⁴

This article explores the question why. Why did the jury find the defendants not guilty? In contrast with all the juries that had heard similar cases, and in judging people with whom they had little reason to sympathize, this jury found that these defendants had more justification for blocking the road to the Duane Arnold nuclear power plant than the state did for prohibiting them from doing so. The verdict in the Palo 13 case highlights the dynamic intersection of law and society and demonstrates how extralegal factors influence legal proceedings and statutory interpretation.

12. Kegel interview. Cordaro, Dryanski, and Runyon were Catholic Workers; Dubert, Gilfoyle, Hagen, Kramer, Marron, and Marsden belonged to the Iowa Socialist Party; Ptak was a member of the Revolutionary Student Brigade; and Scott Morgan was an avant-garde writer and musician.

13. A notable exception occurred the following year in Iowa, when seven individuals, including Palo 13 defendant Scott Morgan, committed civil disobedience at the Duane Arnold plant. See n. 114 for additional details.

14. This claim was made by one of the co-counsels for the defendants and repeated by defendant Scott Morgan in "The Palo 13—A First-hand Account." I have not been able to verify this claim conclusively, but the evidence I have seen supports it.

This article also aims to situate the Palo 13 protest in its historical context and give visibility to Iowa's 1970s grassroots direct action movement.¹⁵ The Palo 13 protest and the anti-nuclear movement in Iowa were part of a national and international movement that contributed to the decline of the U.S. nuclear power industry in the 1980s. Until recently, the movement against nuclear power, especially in the Midwest, has received little attention from historians. This article aims to help fill that void by analyzing a unique chapter in the history of that movement: the acquittal of the Palo 13.¹⁶

THE DUANE ARNOLD ENERGY CENTER, an enriched-uranium boiling water reactor constructed by General Electric with a 550-megawatt capacity, had faced little public opposition in the ten years since Iowa Electric Light and Power Co. announced plans to build it. A few questions about safety were raised, but

15. This article does not use social movement theory as an analytical construct, although it has informed my understanding of the trial and the anti-nuclear movement. A good place to delve into this rich literature is Jo Freeman and Victoria Johnson, eds., *Waves of Protest: Social Movements Since the Sixties* (Lanham, MD, 1999).

16. Most of the early literature that sought to explain the decline of the nuclear power industry focused on economic and policy concerns. Typical of these are Peter Stoler, *Decline and Fail: The Ailing Nuclear Power Industry* (New York, 1985), which analyzes industry mismanagement; and John L. Campbell, *Collapse of an Industry: Nuclear Power and the Contradictions of U.S. Policy* (Ithaca, NY, 1988), which looks into institutional constraints. An exception is Jerome Price, *The Anti-Nuclear Movement* (Boston, 1982), which focused on the role of activists. More recently, historians have explored the role of activists in more detail, focusing mainly on activists on the East or West Coast. See Thomas Raymond Wellock, *Critical Masses: Opposition to Nuclear Power in California, 1958–1978* (Madison, WI, 1998), which argues that local activists weakened federal control over nuclear power; John Wills, *Conservation Fallout: Nuclear Protest at Diablo Canyon* (Reno and Las Vegas, 2006), a social and cultural history of the grassroots movement to close the Diablo Canyon nuclear power plant; and Robert Surbrugg Jr., *Beyond Vietnam: The Politics of Protest in Massachusetts, 1974–1990* (Amherst and Boston, 2009), which argues that the anti-nuclear movement in western Massachusetts was a continuation of 1960s Vietnam-era activism. Other helpful studies of anti-nuclear activism include Christian Joppke, *Mobilizing against Nuclear Energy: A Comparison of Germany and the United States* (Berkeley, 1993); Barbara Epstein, *Political Protest and Cultural Revolution: Nonviolent Direct Action in the 1970s and 1980s* (Berkeley, 1991); and Barkan, "Strategic, Tactical, and Organizational Dilemmas."

the Linn County Board of Adjustment unanimously approved the rezoning application for the site at its regular meeting in late 1969. Six months later, the Atomic Energy Commission (AEC) granted a construction permit.¹⁷

The first formal challenge to the plant occurred in January 1973, when John "Skip" Laitner, co-chair of Iowa City-based Citizens for Environmental Action, filed a petition to intervene in the AEC hearings for the Duane Arnold Energy Center's operating license.¹⁸ Laitner had moved to Iowa in the fall of 1965 to attend Simpson College in Indianola. An antiwar activist at the time, he later became an environmentalist. In the early 1970s Laitner served as director of the Iowa Student Public Interest Research Group (ISPIRG) in Ames, working on issues such as the passage of Iowa's bottle bill.¹⁹

When Iowa Electric first announced plans to build the Duane Arnold Energy Center, Laitner was not opposed to nuclear power. "I preferred nuclear to coal because I was concerned about air quality," he recalled. However, when a couple of residents of Linn County approached him with concerns about the plant's safety, he agreed to help them. "At that point, I just wanted to make sure there was an open process so people could participate," he explained. Laitner wrote to the AEC and received an invitation from Iowa Electric (IE) to meet with some of its staff members within the week.²⁰

Laitner had not copied IE on his letter, so he found it odd that IE—not the AEC—responded. To get up to speed for the meeting, Laitner delved into the literature on nuclear energy and learned that some scientists believed that nuclear power plants had

17. "Iowa A-plant Step Is Taken," *Des Moines Register*, 11/6/1969; "Iowa's First A-plant Gets AEC Approval," *Des Moines Register*, 6/18/1970.

18. "Palo Power Plant Comes Under Fire from Iowa Citian," *Iowa City Press-Citizen*, 1/25/1973; "Citizens' Groups Battle Nuclear Energy Plant," *Daily Iowan*, 1/26/1973.

19. With the support of Ralph Nader, state-based public interest research groups (PIRGs) began to form on college campuses across the U.S. in the early 1970s. PIRGs are still active in 47 states and have a national office in Washington, D.C.

20. Skip Laitner, telephone interviews by author, 4/5/2000 and 1/21/2018. In 1974 Laitner became the first executive director of Critical Mass, a national anti-nuclear organization founded by Ralph Nader. He served in that capacity for 18 months before returning to Iowa to cofound the Community Action Research Group (CARG) in Ames.

serious design problems.²¹ During his meeting with IE officials, Laitner raised questions that they were unable to answer. That raised more red flags for Laitner and prompted him to dig into the files of AEC hearings. He discovered a document titled "Hints on Being a Witness," which AEC lawyers had prepared for the expert witnesses they called to testify in licensing hearings. Scanning the page, Laitner saw the following directives: "Never fraternize with the opposition" and "Never disagree with established policy." The document confirmed his earlier suspicions. The nuclear energy bureaucracy, he concluded, could not be trusted; it showed an unconscionable disregard for democratic processes and the well-being of society. "That turned me around," he said. Laitner became a confirmed opponent of nuclear power.²²

In the petition he filed to intervene in the hearings for Duane Arnold's operating license, Laitner posed questions about the "safety, necessity, and environmental effects" of the plant. The AEC, he later stated, treated the petition "as a joke."²³ It granted an operating license to the Duane Arnold Energy Center, and Iowa's first nuclear power plant began generating electricity on a test basis in May 1974. It was operating at capacity by early 1975.

As Laitner would later argue, the Palo plant was built, ultimately, because opposition failed to emerge in the early stages of the process.²⁴ He and others were determined that this would not happen again. Several environmental groups in Iowa took up the anti-nuclear cause in the mid-1970s: ISPIRG (which, by then, had chapters on several college campuses around the state); Citizens United for Responsible Energy (CURE) in Des Moines; Citizens for Environmental Action (CEA) in Iowa City; Free Environment, a student organization at the University of Iowa in Iowa City; and the Community Action Research Group (CARG) in Ames. The environmentalists and advocates for safe energy who belonged to these organizations worked together to oppose

21. The information that made the most impact on Laitner came from John Holdren and Philip Herrera, *Energy: A Crisis in Power* (San Francisco, 1971).

22. Laitner interview.

23. "Palo Power Plant Comes Under Fire"; Laitner interview.

24. Laitner interview.

nuclear power within the educational, legislative, and regulatory arenas.²⁵

In 1976, in a measure strongly backed by Iowa's environmental groups, the Iowa General Assembly passed a law requiring all new electric power plants in Iowa to be licensed by the Iowa Commerce Commission (ICC).²⁶ This new law bolstered Iowans' control over nuclear power plants in their state. Although the federal government continued to grant operating licenses and regulate radiological issues, nuclear power plants would now be required to meet specific state requirements.²⁷ Iowa's environmental groups provided written testimony and appeared before the ICC to argue for strong rules.²⁸ The ICC did not adopt all of the environmentalists' suggestions, but the new rules had some teeth: they required any company applying for a license to open a new power plant in Iowa to show that the plant was necessary and that it was in compliance with "applicable land use, environmental, and aesthetic standards."²⁹

Iowa's environmental groups claimed victory when Iowa Electric announced in February 1977 that its plans to build Iowa's second nuclear plant in Prairie City, a small town 17 miles southeast of Des Moines, had been put on hold. The chair of the ICC called it "a wise decision," noting that questions about fuel reprocessing, among others, needed to be answered before the state

25. "Coalition Forms to Block Nuclear Plant," *Daily Iowan*, 9/15/1975; "Energy Group Complaint on Iowa Power Message," *Des Moines Register*, 10/16/1975. At some point, the Iowa Student Public Interest Research Group (ISPIRG) changed its name to the Iowa Public Interest Research Group (IPIRG) to reflect the fact that the membership included non-students.

26. H.F. 1470, Electric Power Generators, reported in 1976 *Acts of Iowa*, 453. Information on the new bill also appears in "Nuclear Power: Problems in Iowa," *Free Environment*, December 1976. The measure had been recommended by the Iowa Energy Policy Council. See *Nuclear Energy: 1975, A Report from the Iowa Energy Policy Council*, 5/2/1975, 32.

27. This strategy was part of a national trend by states to exert more control over nuclear facilities within their borders. See Wellock, *Critical Masses*, on how California activists used state government institutions to gain more control over the development of nuclear power in their state. Wellock argues that the decentralization of nuclear regulation was a key factor in the industry's decline.

28. "Group Calls for Strict 'Nuke' Rules," *Daily Iowan*, 12/8/1976; "Nuclear Power: Problems in Iowa."

29. Iowa State Commerce Commission, *Annual Report*, 1977, 5.

would grant a license.³⁰ To this day, no new nuclear power plants have been built in Iowa.

THE 40 OR SO PEOPLE who attended the first statewide meeting of the Iowa Mobilization for Survival in January 1979—at which plans for nonviolent direct action at the Duane Arnold Energy Center were made—had not, for the most part, belonged to the earlier-established environmental groups.³¹ They were part of a new wave of activists drawn to an anti-nuclear movement that had become radicalized in the wake of the events at Seabrook, New Hampshire. There, in the spring of 1977, more than 1,400 protestors had been arrested at the site of a proposed nuclear power plant.³² The organizers of the Seabrook occupation, the Clamshell Alliance, had been inspired by the successful 1975 occupation of a proposed nuclear power plant site in Wyl, Germany, where 28,000 farmers, students, and environmentalists forced the cancellation of a planned nuclear power plant after occupying the site for nearly nine months. When residents of the northeastern United States learned that, despite strong public opposition, a construction permit had been issued for a nuclear power plant to be built in Seabrook, many saw occupying the site as a viable approach. As one of the Clamshell Alliance leaders later wrote, “It seemed that by force of numbers, nonviolent direct action might succeed as a ‘last resort’ against nuclear power where intervention and referenda had failed.”³³

30. “Central Iowa Atom Plant Put on Shelf,” *Des Moines Register*, 2/19/1977.

31. There were, however, several critical links to them, including Susan Futrell and Steve Marsden. In Iowa, the bright line between groups using direct action and those favoring legislative and educational tactics had not led to the kind of infighting and alienation reported in other parts of the country.

32. The Seabrook occupation has been well documented by many. See, for example, Barkan, “Strategic, Tactical and Organizational Dilemmas”; Anna Gyorgy et al., *No Nukes: Everyone’s Guide to Nuclear Power* (Boston, 1979); Harvey Wasserman, *Energy War: Reports from the Front* (Westport, CT, 1979); Surbrug, *Beyond Vietnam*; and Epstein, *Political Protest and Cultural Revolution*. For a full history of the Seabrook power plant, see Henry F. Bedford, *Seabrook Station: Citizen Politics and Nuclear Power* (Amherst, MA, 1990).

33. Gyorgy, *No Nukes*, 386. Several key leaders of the Clamshell Alliance, including Gyorgy, had also lent support to an earlier act of civil disobedience against nuclear power committed by Sam Lovejoy, who, on George Washington’s birthday in 1974, cut down a weather tower that was collecting data for a future nuclear

The impact of the Seabrook occupation on the U.S. anti-nuclear movement was enormous. It catapulted the issue to the front pages of America's newspapers and became both a symbol and a model for a whole wave of new anti-nuclear groups.³⁴ As anti-nuclear alliances formed in other parts of the country, they adopted the Clamshell's commitments to nonviolent direct action and consensus decision making. Training sessions for civil disobedience (influenced by early Clamshell members who belonged to the American Friends Service Committee and by the Movement for a New Society, a Philadelphia-based organization with Quaker origins), became standard preparation for acts of civil disobedience in the anti-nuclear movement.³⁵

In her study of the nonviolent direct action movement of the 1970s and 1980s, movement participant and scholar Barbara Epstein notes that although the Clamshell's philosophy was influenced by the Quakers, "the fundamental reason nonviolence and consensus were adopted by the Clamshell was that the culture of which it was a part was already imbued with those values." Many anti-nuclear protestors had participated in earlier movements for social and cultural change, and they brought to the Clamshell Alliance a "consciously non-sexist and non-hierarchical" style they had already come to value. "Direct action," Epstein concludes, "is as much about a particular social vision (and the

power plant in western Massachusetts. Lovejoy turned himself in to the police, defended himself in court, won a dismissal of the charges on technical grounds, and became a legend both locally and nationally after a film company made a documentary of the case, *Lovejoy's Nuclear War*, which was shown across the nation by anti-nuclear activists. Lovejoy also traveled across the country on speaking tours with the film. He appeared in Iowa City about two weeks before the Palo 13 committed civil disobedience. The Lovejoy case, thus, can also be seen as a key launching pad for the Clamshell and the national anti-nuclear direct action movement. The case is recounted in Surbrug, *Beyond Vietnam*, chap. 1.

34. Scholars tend to divide activist participation in the anti-nuclear movement into two phases: the first wave of public interest and environmental advocacy starting in the 1960s, and the second wave of direct action starting in the mid-1970s. See Jerome Price, *The Antinuclear Movement*, rev. ed. (Boston, 1990); and Joppke, *Mobilizing Against Nuclear Energy*.

35. Gyorgy, *No Nukes*, 397. In April 1978 the Movement for a New Society printed "Why Nonviolence?: Nonviolence Theory and Strategy for the Anti-Nuclear Movement," newsprint booklet, in author's possession. It recounts the history of nonviolent direct action and makes the case for its use in the anti-nuclear movement.

practice of community building) as it is about the particular issue it has taken on."³⁶

Thus, the structure, style, and methods of the direct action anti-nuclear alliances were self-conscious attempts to enact the change they wanted to create. The Iowa activists who participated in civil disobedience at Palo shared the social and cultural vision that animated anti-nuclear alliances across the United States. "The two most important qualities I feel we [had in common]," a Palo 13 defendant later wrote, "were our commitment to nonviolence and our belief in the consensus process." And, as another defendant recalled, "We were young. We thought we could change the world."³⁷

The 1976 Continental Walk for Disarmament and Social Justice was a key event in the making of Iowa's statewide network of anti-nuclear activists.³⁸ Several Palo defendants met for the first time on the walk. More importantly, two Iowa-based organizations founded in its wake—the Des Moines Catholic Worker house and the Iowa Socialist Party—began using direct action strategies within a number of contexts in the Midwest, including the anti-nuclear movement.³⁹ These groups provided institutional support and served as cultural resources for the use of direct action in Iowa. Most of the 13 Palo defendants belonged to, or were associated with, one of these organizations.

36. Epstein, *Political Protest and Cultural Revolution*, 81, 1; Gyorgy, *No Nukes*, 388. A scholar of the Abalone Alliance, a West Coast anti-nuclear group, makes the same point: "The fondness displayed by Abalone members for nonviolence and consensus process reflected their belief that such systems would bring about fundamental social change." Wills, *Conservation Fallout*, 107.

37. Morgan, "The Palo 13—A First-hand Account"; Hagen interview.

38. The walk, initiated by the War Resisters League, was a call to shift national priorities from funding weapons to funding services to meet human needs. Walkers left San Francisco in January 1976 and arrived in Washington, D.C., in October 1976. Many people joined the local "feeder" routes, and some joined for the final days of the walk into Washington, D.C. For a pictorial history of the walk, see Vicki Leonard and Tom LacLean, eds., *The Continental Walk for Disarmament and Social Justice* (New York, 1977). The frontispiece is a poem written by Greg Green, one of the three members of the Palo 13 who walked the entire Nebraska-Iowa feeder route from Lincoln, Nebraska, to Chicago, Illinois; the other two were Jean Hagen and Steve Marsden.

39. Bill R. Douglas and Patti McKee, "Iowa and Nonviolent Resistance" [mid-1980s], in the author's possession. The authors note that in 1977 and 1978 non-violent direct action was used by Catholic Workers and ISP members in protests related to labor issues, prison reform, and nuclear war.



Jean Hagen, Steve Marsden, Michael Carrick, and Dandruff (the dog) pose along the Nebraska-Iowa feeder route from Lincoln, Nebraska, to Chicago, Illinois, of the Continental Walk for Disarmament and Social Justice. Photo courtesy of Palo 13 defendant Jean Hagen.

The Continental Walk was key to the development of Iowa's anti-nuclear movement in another way as well. Susan Futrell of Iowa City joined the walk for its final leg into Washington, D.C., in October 1976. Futrell had been an environmental and political activist as a high school student in her home town of Ames, Iowa, where she had volunteered with the Iowa Student Public Interest Research Group.⁴⁰ After she moved to Iowa City to attend the University of Iowa, Futrell continued her environmental activism as a volunteer researcher and writer with *Free Environment*. On the walk, she heard that a rally was taking place the following week in Seabrook, New Hampshire, to protest a proposed nuclear

40. Futrell first met Skip Laitner through her work in ISPIRG, where he was the director at the time.

power plant. She attended the rally, where she learned of plans for a mass occupation at the Seabrook site the following spring. "I was 19 or 20 years old, and people were talking about the importance of putting yourself on the line," she recalled. When the rally was over and people started to leave, "everyone was saying 'see you in the spring.' And I have a clear memory of saying that, and meaning it, and never looking back. . . . I knew I was going."⁴¹

Futrell's participation in the historic Seabrook occupation in the spring of 1977, including her two-week stay in state custody at the Dover armory, affected her profoundly. "Nothing I write here about the details of this can convey the incredible thing happening," she wrote to her friends in Iowa during her detention. "None of us is unchanged."⁴² Although Futrell had been an environmental activist for a number of years, direct action "was a whole new level of citizen action [that was] much more personally intentional," she explained. It demanded a "serious level of thinking and philosophical engagement" that she found compelling. Wanting to deepen her involvement in the anti-nuclear movement and its approach to creating social change, she attended a week-long "Train the Trainer" course sponsored by the Movement for a New Society, where she learned to facilitate training sessions for nonviolent civil disobedience actions.⁴³ As the Iowa movement grew in the late 1970s, Futrell's experiences at Seabrook and her credentials as a trainer for direct action were key resources for the group.

By the fall of 1977, Iowa's anti-nuclear activists had begun coordinating their activities across the state under the aegis of the Iowa Mobilization for Survival, an affiliate of the newly formed national Mobilization for Survival. The organization's four goals were to end nuclear power, end nuclear weapons, ban the arms race, and fund human needs. Thus, the safe energy and environmental groups that had carried the anti-nuclear banner in Iowa up to that point were now joined by the pacifists, feminists, anti-war activists, anarchists, socialists, Catholic Workers, and Marxists

41. Futrell interview.

42. Ibid.; Susan Futrell, "Letter from Dover Armory," *Free Flowing*, May 1977, 5. In her study of the Clamshell Alliance, Epstein, *Political Protest and Cultural Revolution*, 59, notes that it was "a transformative experience" for many people.

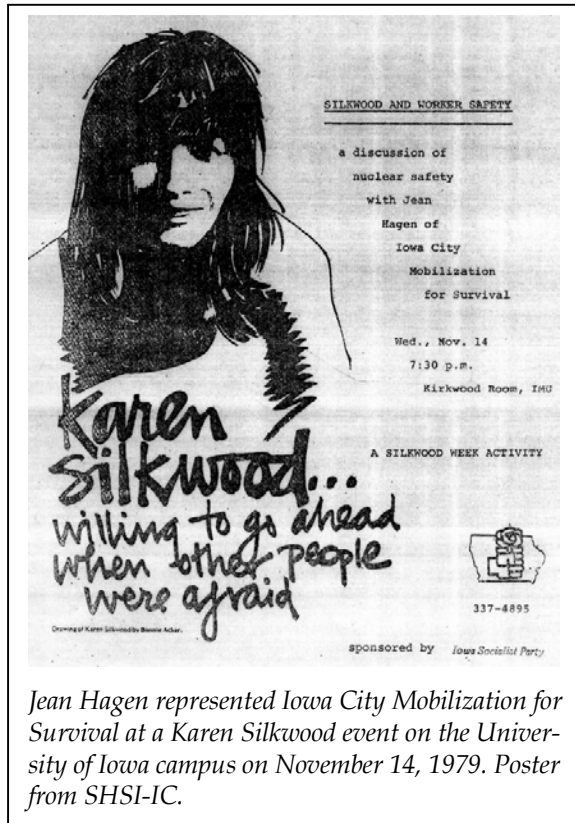
43. Futrell interview.

who constituted Iowa's peace and social justice community to form a broad-based, statewide anti-nuclear coalition.

Iowa Mobilization for Survival activists sponsored a dizzying array of activities in the years 1978 through 1981. Building on the work of the earlier environmental groups, they sought new audiences and employed new methods for conveying the message that nuclear power—like nuclear weapons—was too dangerous, too expensive, and unnecessary. The group organized workshops and forums, wrote informational pamphlets, held rallies and marches, brought in experts and activists from other parts of the country, hosted public discussions, and held public commemorations on Karen Silkwood Day and Hiroshima Day.⁴⁴ The most active chapter was in Iowa City, but groups in Des Moines, Ames, and Grinnell met regularly. In addition, activists across the state were linked to the anti-nuclear movement via their membership in other pacifist, feminist, environmental, and social justice organizations that often co-sponsored events with the Mobilization.

Singing together is a social movement tradition that Iowa Mobilization for Survival members embraced enthusiastically. Rallies and public events often included renditions of movement melodies such as "Ain't Gonna Let Nobody Turn Me Around" and "We Shall Not Be Moved," with new lyrics about nuclear power or nuclear weapons. An edgier form of cultural expression also punctuated Iowa's anti-nuclear movement. The Iowa City-based punk rock band Pink Gravy performed several original songs with atomic themes that gave voice to contemporary anxiety over the proliferation of radiation in the environment.

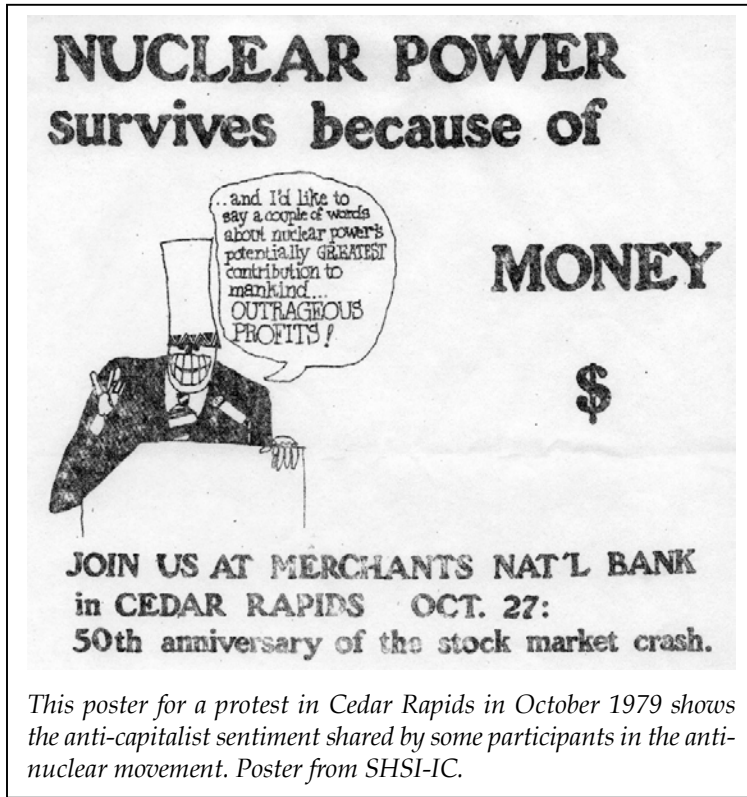
44. Karen Silkwood worked at a plutonium processing plant owned by the Kerr-McGee Corporation in Crescent, Oklahoma. In November 1974 she died in a mysterious car crash while on her way to meet a reporter to provide him with documents regarding safety violations at the plant. The documents were never recovered. Silkwood became a national figure in the anti-nuclear movement. Throughout the 1970s and into the 1980s, events were held across the nation each November to honor and remember her. *Silkwood*, a movie about her life and unsolved death starring Meryl Streep and Cher, was released in 1983. Two books about her mysterious case were published in 1981: Howard Kohn, *Who Killed Karen Silkwood?* (New York, 1981); and Richard L. Rashke, *The Killing of Karen Silkwood: The Story Behind the Kerr-McGee Plutonium Case* (Boston, 1981). Rashke published a new edition of his book in 2000, and a Kindle version with a new introduction was published in 2014, in which he excoriates both the government and Kerr-McGee for continuing to withhold access to documents that might help answer the questions that still surround Karen Silkwood's death.



Pink Gravy concerts often ended with a piece called “Emotional Data,” an audience favorite that began, “I’m a radiation victim” and ended in a mass performance of the meltdown, a “dance” in which audience members sank to the floor writhing as band members wailed, “I’m melting.”⁴⁵ The Mobilization for Survival welcomed Pink Gravy’s participation at several anti-nuclear rallies in Iowa City and Cedar Rapids.⁴⁶

45. Pink Gravy members included Thomascyne Buckley, Brenda Knox, Scott Morgan (Palo 13 defendant), David Duer (author of the lyrics for “Emotional Data”), Eric Roalson, Chad Barker, and Paul Bergmann (composer of the music for “Emotional Data”). Archival material on Pink Gravy can be found in Special Collections, University of Iowa Libraries, Iowa City.

46. On the national level, musicians Jackson Browne, Bonnie Raitt, Graham Nash, and John Hall organized Musicians United for Safe Energy (MUSE) in 1979 and performed No Nukes concerts in New York to raise money for the movement.



This poster for a protest in Cedar Rapids in October 1979 shows the anti-capitalist sentiment shared by some participants in the anti-nuclear movement. Poster from SHSI-IC.

Iowa's anti-nuclear activists understood that the economics of nuclear power, the processes involved in the nuclear fuel cycle (such as mining uranium, reprocessing spent fuel, and storing nuclear waste), the effects of low-level radiation, and the connection between nuclear power and nuclear weapons touched communities across the continent and around the globe.⁴⁷ As a result, Iowa activists participated in national and international anti-nuclear activities; they attended regional and national anti-nuclear meetings, networked with alliances in adjoining states, and participated in demonstrations in other states. Iowa Mobilization for Survival members joined the Black Hills Alliance, for example, a coalition

47. Activists educated themselves about nuclear power through pamphlets, books, articles, and other publications that circulated widely within the movement; they also created their own handouts and information sheets. Much of this information was compiled in Gyorgy, *No Nukes*. Bibliographies were also available from most anti-nuclear groups.

of white ranchers and Native Americans in South Dakota who organized to oppose uranium mining in the Black Hills.⁴⁸ They attended a Midwest No-Nuke conference where they shared information, membership lists, and plans for demonstrations with more than 300 activists from nearly 30 anti-nuclear groups in the Midwest.⁴⁹ In 1979 the Iowa anti-nuclear movement sponsored a safe energy walk in solidarity with the International Days of Anti-Nuclear Protest, and in 1980 they brought in a speaker from the Puerto Rican Independence Movement who discussed the problems of exporting nuclear technology to other countries. The local anti-nuclear publication *Free Environment Newsbriefs* kept Iowa activists connected to the global anti-nuclear movement by reporting national and international nuclear news.

THE MAIN FOCUS of Iowa's anti-nuclear activists, however, was the effort to shut down Iowa's only nuclear power plant. Since coming on line in 1975, the Duane Arnold plant in Palo had closed several times to correct minor operational problems. In June 1978 a more serious situation developed. After problems with electrical relays in the reactor protection system accidentally shut down the reactor, an inspection revealed that radioactive water was leaking from a primary coolant pipe at a rate of three gallons per minute. The crack initially appeared to be approximately four inches in length. Further investigation revealed that the pipe was cracked through nearly 75 percent of its circumference—and it was not the only bad pipe: all eight of the coolant pipes were cracked to one degree or another, and all would require repairs. A Nuclear Regulatory Commission official was quoted as saying that the cracked pipes at Palo were among "the most serious" problems that had occurred in the commercial nuclear industry in the United States. Most disconcerting of all was that this dangerous situation had been discovered by accident. The repair process proved to be lengthy and challenging. The pipes required welding, a difficult task because they were located

48. Approximately 30 Iowans participated in a walk in the Black Hills in the summer of 1979, and at least that many returned the following summer to spend ten days at the 1980 Survival Gathering, an international event sponsored by the Black Hills Alliance that was attended by thousands of people.

49. The conference was held in Gary, Indiana, in February 1979.

in radioactive areas of the facility and because there was no protocol for fixing them. What was initially thought to be a two-to-three-week shutdown lasted nearly nine months.⁵⁰

Many troubling questions about safety at the plant were raised during these months. In November 1978 the *Daily Iowan* reported that a "veteran nuclear plant repair technician" characterized the quality control of the repair process at the Palo plant as "the worst" he had ever seen. His complaints were reported to the Nuclear Regulatory Commission (NRC), which initiated an investigation. The NRC's report, issued in January 1979, found much to criticize: it cited numerous violations, including lax procedures and inadequate training for the welders. Not long afterwards, a local newspaper reported that a radioactive disk had been stolen and an unidentified object was blocking one of the newly welded pipes. At the same time, company officials revealed that they had received anonymous letters threatening damage to the plant should it reopen. In an effort to improve plant security, the guards at the plant were required to submit to lie detector tests.⁵¹

In early February 1979 the NRC's Illinois Office of Inspection and Enforcement released its findings on the repairs that had been completed at the Duane Arnold plant. According to the report, radiographs revealed "irregular weld surfaces inside some of the

50. "Duane Arnold Plant . . . One of the Most Serious Problems in Nuclear Energy History," *Free Environment Newsbriefs*, December 1978; "Local Nuclear Plant Shuts Down: Cooling System Defective," *Free Environment Newsbriefs*, July/August 1978. The Atomic Energy Commission was disbanded in 1974 because its dual mission of promoting and regulating the industry created a conflict of interest. The two duties were separated: the Nuclear Regulatory Commission took over regulatory duties, and the Energy Research and Development Administration became the industry advocate.

51. "Palo Nuclear Plant Repair Quality in Doubt," *Daily Iowan*, 11/21/1978; "NRC: Palo Procedures in Violation," *Daily Iowan*, 1/30/1979; "New-found Plug in Palo Pipe," *Daily Iowan*, 2/1/1979; "'Goof-up' Left Lead Shield Blocking Palo Plant Pipe," *Daily Iowan*, 2/8/1979; "Palo Theft Reported," *Daily Iowan*, 2/9/1979; "Start-up Testing at Palo Plant Approved Despite Faulty Welds," *Free Environment Newsbriefs*, March 1979; "Palo Plug Raises Sabotage Question," *Daily Iowan*, 2/2/1979; Vigilantes' Cloud Palo Situation," *Daily Iowan*, 3/13/1979; "Palo Plant Guards Forced to Take Lie Detector Test," *Des Moines Register*, 3/21/1979. In a bizarre turn of events, the Iowa Socialist Party released a letter it received on March 12, 1979, signed by the Eastern Iowa Anti-Nuke Vigilantes, in which the author took responsibility for "two recent acts of sabotage" at the plant. Box 7, Antimilitarism: Nuclear Freeze, Bill Douglas Papers, State Historical Society of Iowa, Iowa City. The letter was published in local newspapers.

pipes, which may in some places contain crevices and other unacceptable conditions." Three of the four experts who read the radiographs found them unacceptable. Because of the lack of consensus, however, the NRC announced that it would neither certify nor reject the welds. Instead, the agency would give Iowa Electric the opportunity to demonstrate that the welds met NRC safety standards.⁵² Iowa Electric officials, eager to bring the plant back on line, responded quickly. Company officials, along with additional experts, traveled to the NRC Office of Nuclear Reactor Regulations in Washington, D.C. Their presentation was successful. Shortly afterwards, the NRC announced that the Duane Arnold plant—with some new requirements, including more frequent inspection of welds—had permission to resume generating electricity.⁵³

The Iowa anti-nuclear movement had stepped up its activities since the plant shutdown. The largest demonstration to date was held in November 1978, when more than 300 Iowans marched from Palo to the Duane Arnold Energy Center and later rallied outside the Iowa Electric tower in downtown Cedar Rapids, calling for the plant to remain closed.⁵⁴ In January 1979, at the first statewide Mobilization for Survival meeting, strategies for keeping the plant closed were discussed. Activists believed that the events of the past nine months demonstrated that the plant was not safe. Adding to the concerns was the November 1978 release of a new NRC report. It concluded that its previous study on the safety of nuclear power plants had "greatly understated" the probability of a severe accident.⁵⁵ Participants at the meeting agreed that they needed to do more to raise public awareness on the issue and that civil disobedience was an appropriate tactic to

52. "Palo Welds Not Proved Okay," *Daily Iowan*, 2/13/1979. Reading the radiographs, the NRC spokesperson explained, "is a matter of professional opinion."

53. "Iowa Electric, NRC Talk Over Palo Weld Rejection," *Daily Iowan*, 2/14/1979; "Palo Reactor to Open," *Daily Iowan*, 3/7/1979; "Start-up Testing at Palo Plant Approved Despite Faulty Welds."

54. "Iowans Hold Anti-Nuke Memorial," *Daily Iowan* 11/20/1978; "Concerned Iowans Gather to Support Anti-Nuclear Rally," *Free Environment Newsbriefs*, December 1978; "Nukes Are Lemons," *Daily Planet*, 11/30/1978. The rally was held in conjunction with events across the nation commemorating Karen Silkwood.

55. "So Now It's Official," *Free Environment Energy News*, November 1978. The previous study, issued in 1974, was called the Rasmussen Report; critics of the industry had long questioned its conclusions.

use in that effort. A smaller group began to make plans to take direct action at the Palo plant. When Iowa Electric announced that the plant would reopen, there was no more waiting: Iowa Mobilization for Survival set the date to commit civil disobedience at the Duane Arnold Energy Center.

IT WAS NOT BUSINESS AS USUAL at the Linn County courthouse on Tuesday, June 19, 1979, the opening day of the trial of the Palo 13. To begin with, most cases involve a single defendant—not 12.⁵⁶ In addition to the commotion caused by the crowd at the defense table, several of the defendants had told their attorneys that they would not, as a matter of conscience, rise for the judge when he entered the courtroom.⁵⁷ Through a prearranged agreement, therefore, several defendants were escorted into the courtroom after the judge had already entered and taken his seat. Lastly, the jury selection process took an entire day, much longer than usual, due to the consensus style of decision making used by the defense: after each potential juror had been questioned, the Palo 13 and their attorneys held extended conversations, deciding as a group whom to accept and whom to reject. Consensus was fundamental to the group's process because it embodied the defendants' belief that hierarchy was undesirable. As one defendant explained—"No leaders. Definitely not."⁵⁸

The Palo 13 team members soon realized that they were fortunate to have had their case assigned to Judicial Magistrate Thomas Koehler, who had been on the bench for just six months. A native of Henry, Illinois, Koehler moved to Iowa to attend Loras College in Dubuque. He later earned a law degree at the University of Iowa and was admitted to the bar in 1962. Koehler, who was 42 years old at the time of the trial, received high praise

56. Defendant Greg Green was too ill to attend the trial, but the group was still called the Palo 13.

57. "Jury Selection Begins in Palo Trespass Case," *Cedar Rapids Gazette*, 6/19/1979; Kegel interview. Defendant Frank Cordaro had already been convicted of contempt of court for failing to rise in Judge Koehler's courtroom, for which he had received a two-day sentence (see n. 6). Judge Koehler recently stated that the guilty verdict was a result of his inexperience on the bench, and he soon adopted a different approach to such matters. Thomas Koehler, interview by author, 10/15/2015, Cedar Rapids.

58. Scott Morgan, telephone interview by author, 4/4/2000.

from the defense team for his handling of the case. Lead defense attorney Jack Kegel found him to be “somewhat more liberal than other judges” in the “latitude” he gave in questioning. Kegel also appreciated that Judge Koehler “did not show any bias against the defendants” in his demeanor or rulings.⁵⁹ The judge also had a good rapport with Kegel—noticeably better than he had with the prosecuting attorney. One spectator overheard members of the state’s team comment on this fact in the hallway during a recess.⁶⁰ Kegel felt that he impressed the judge favorably with his professionalism and adherence to good courtroom procedure. “Judge Koehler and I got along very well during the course of those trials,” he recalled.⁶¹

On Wednesday, June 20, Assistant Prosecutor Kevin Shea presented the state’s case. A 1978 graduate of Drake Law School, Shea was new on the job, and his lack of experience showed. “He made mistakes like asking questions he didn’t know the answer to,” stated one of the defendants’ sympathizers who attended the trial. “It made him look bad.”⁶² Shea’s strategy was straightforward: the defendants had trespassed on private property and refused to leave when warned of the consequences of their actions. They were guilty of criminal trespass.

Unfortunately for Shea, his witnesses not only failed to prove conclusively that the defendants were on Duane Arnold property when arrested, but they misidentified two of the defendants in the process.⁶³

Defense Attorney Kegel: Can you identify the picture you hold in your hand?

Deputy Richard Barrett: I can identify the picture, yes.⁶⁴

The state rested its case against the Palo 13 before the noon recess.

59. Kegel interview.

60. Bill R. Douglas, telephone interview with author, 4/27/2000.

61. Kegel interview. Kegel uses the plural because he is referring to both the Palo 13 trial and Frank Cordaro’s earlier obstruction trial.

62. Douglas interview.

63. Witnesses included Linn County Sheriff Orlie Workman, IE Security Officer Mary Juvik, and the arresting officers. Information on the misidentification from Morgan, “The Palo 13—A First-hand Account”; Bill R. Douglas, “Anti-Nuclear Activists Vindicated,” *The Iowa Idea*, July–August 1979; and Hagen interview.

64. Morgan, “The Palo 13—A First-hand Account.”

Based on the state's failure to prove its case, the defense attorney prepared a motion for acquittal, but the defendants asked him to withdraw it. As their attorney explained to the press, the Palo 13 were more interested in presenting their case against nuclear power than in getting acquitted.⁶⁵ The defendants' not guilty plea was based on their conviction that they had just cause to trespass at Duane Arnold—and they wanted an opportunity to explain their reasons to the court. When the judge told one of the misidentified defendants that she could be dismissed, she demurred. "She said she wanted to be there; I think that impressed the jury," a defendant recalled.⁶⁶

The Palo 13's legal strategy had been developed, consensus-style, in a series of lengthy meetings between the defendants and their lead attorney Jack Kegel.⁶⁷ Kegel grew up in the Chicago area and first moved to Iowa in the mid-1960s to attend Simpson College, where he first met Skip Laitner. After graduation, he applied to serve in the Peace Corps, but was not accepted. In 1970 he was drafted into the army and stationed in Germany for almost two years. A couple of years after his discharge, Kegel entered the University of Illinois College of Law. During his law school years, he volunteered at the Champaign County Public Defender's office, where he often served as second chair in felony jury trials. After earning his J.D. in 1977, Kegel took a job in that office and was soon trying felony cases in front of juries on his own. The experience, Kegel recalled, was a sort of "immersion therapy in courtroom demeanor, procedure, and tactics." Kegel learned a great deal about the law but did not find the job satisfying. After working on a death penalty case, he decided to shift the focus of his practice.⁶⁸

65. "Witnesses: Protesters Warned," *Cedar Rapids Gazette*, 6/20/1979.

66. Hagen interview.

67. Court documents and the press referred to Kegel as "Ralph" because that was his legal first name at the time, although he went by the name "Jack." Two other attorneys worked on the case with Kegel. Marty Knanishu, the original co-counsel, worked with Kegel and the defendants to prepare the case for trial but had to withdraw at the last minute when his presence was required on a case in Illinois. Bob Lang took his place. Lang played an important role in making sure the defendants understood the legal proceedings and were comfortable with what the defense team was doing. Knanishu's other case was completed sooner than expected, and he was in the courtroom for the final two days of the trial.

68. Jack Kegel, email notes to author, 1/7/2018; Kegel interview.

It was at that point that Kegel's college friend Skip Laitner reached out to him from Iowa. The Community Action Research Group that Laitner directed had received a one-year grant to hire an attorney. Did he want the job? Kegel took the offer and moved to Iowa in late spring 1978. The one-year job at CARG ended in spring 1979, and Kegel's next position, with Iowa Legal Services, did not begin until July. The timing was perfect and so was the political chemistry. Kegel was of the same generation as the Palo 13, and he shared many of their convictions. Thus, he was both available and willing to defend them.⁶⁹

Although the defendants had not known Kegel prior to their decision to commit civil disobedience at the Duane Arnold nuclear power plant, they quickly grew to trust him.⁷⁰ As one defendant stated, "He was more than our lawyer. I mean, he picked me up every morning and drove me to the courthouse for the trial. He really cared. He had heart."⁷¹ The passion he brought to the case, combined with his courtroom experience, made Kegel the right person for the job. He knew how to negotiate the space between the legal system and the Palo 13's unorthodox response to it. Several months after the trial ended, one of the defendants expressed his admiration this way: "Jack was able to incorporate our most eccentric and esoteric torturings of thought and language into a coherent and unified defense."⁷²

The defendants' strategy was, in their words, to "put nuclear power on trial." But that would be possible only if the judge allowed the use of the common law necessity defense, in which defendants show that their actions, which would usually be considered illegal, were necessary, and therefore legal, to prevent a greater harm from occurring. In the Palo 13's case, in order to demonstrate the greater harm, the defense planned to explain the dangers of nuclear power. They hoped that the jury, in possession

69. Kegel interview.

70. Kegel attended the civil disobedience training session with the defendants as well as the March 24 action at Duane Arnold, which helped build rapport with the defendants.

71. Hagen interview.

72. Scott Morgan, "July 6th Task Force Report," in author's possession.

of that information, would agree that trespassing at Duane Arnold had been necessary.⁷³

In light of the accident at the Three Mile Island nuclear power plant in Harrisburg, Pennsylvania, which had stunned the nation on March 28, 1979—only four days after the arrest of the Palo 13—the defendants had reason to hope that the jury would be receptive to hearing about the dangers of nuclear power.⁷⁴ Coverage of the events at Three Mile Island had dominated national news and commanded the front page of the *Cedar Rapids Gazette* for five days running.⁷⁵ The nation had held its breath for days as officials scrambled to prevent “the worst U.S. nuclear power plant crisis from turning into a nuclear nightmare.” The situation involved many unknown factors, which hampered a quick and reassuring response: experts could not agree on the nature of the danger posed by the gas bubble in the reactor, on the best way to remove the bubble, or on whether the area should be evacuated. The accident at Three Mile Island had demonstrated to Americans that a nuclear accident could occur and that the ability of either the plant’s owners or government officials to manage a nuclear accident was limited.⁷⁶

The use of the common law necessity defense in civil disobedience cases is, however, controversial and frequently disallowed.⁷⁷ The prosecution attempted to deny the Palo 13 access to the

73. “Trials Set for Palo Protesters; One Still Held,” *Cedar Rapids Gazette*, 3/26/1979; Kegel interview.

74. For a detailed account of the accident as well as a concise overview of the nuclear power debates in the United States in the 1970s, see J. Samuel Walker, *Three Mile Island: A Nuclear Crisis in Historical Perspective* (Berkeley, CA, 2004).

75. “Radiation Escapes in N-plant Breakdown,” *Cedar Rapids Gazette*, 3/28/1979; “Radiation Leaks Continue,” *Cedar Rapids Gazette*, 3/29/1979; “Limited Evacuation Advised,” *Cedar Rapids Gazette*, 3/30/1979; “Critical Decisions Upcoming,” *Cedar Rapids Gazette*, 3/31/1979; “Reactor Danger Grows,” *Cedar Rapids Gazette*, 4/1/1979. The *Gazette* also featured photos of the now famous Three Mile Island reactor on its photo page twice that week: “Reactor Closed Down,” *Cedar Rapids Gazette*, 3/29/1979, and “Hurt Its Resale?” *Cedar Rapids Gazette*, 3/30/1979.

76. “Critical Decisions Upcoming”; “Reactor Danger Grows.” A popular movie in release at the time, *China Syndrome*, which depicted a fictional nightmarish situation at a nuclear power plant, amplified the public discourse about nuclear safety.

77. Steven M. Bauer and Peter J. Eckerstrom, “The State Made Me Do It: The Applicability of the Necessity Defense to Civil Disobedience,” *Stanford Law Review* 39 (1987), 1173–97.

necessity defense even before the trial began by filing a pretrial motion requesting that the defendants “be precluded from using any pleading, testimony, remarks, questions, or arguments which elude [*sic*] to or inform the jury of nuclear energy.” Judge Koehler denied the motion, noting that this was a matter “better handled at the trial.”⁷⁸ In other words, he wasn’t *yet* excluding testimony about nuclear power. Since Judge Koehler had already shown his willingness to be flexible, the Palo 13 team was hopeful as they began presenting their case.

THE FIRST WITNESS for the defense was Susan Futrell of Iowa City, who had facilitated the training session in nonviolent direct action in which all the defendants had participated. Futrell was a strong witness. Her thoughtful, articulate, and confident testimony “spellbound the jury” as she explained the purpose and activities of the day-long session she had conducted for the defendants.⁷⁹ She also described the meetings she and defendant Jean Hagen had held with the sheriff and Iowa Electric security personnel prior to the action. Futrell, a clean-cut young woman who had dressed with care for the occasion, explained nonviolent direct action as a carefully chosen, well thought-out strategy that involved a deep commitment to values such as personal responsibility and respect for others.⁸⁰

The second day of the trial saw another interesting departure from usual courtroom procedure: the defendants rose for the jury! As one defendant explained, it was a “show of respect for the people.” Standing for the jury—but not for the judge—was

78. *State of Iowa v. Frank Joseph Cordaro*, No. SP6704-0379 Criminal Trespass Motion in Limine, April 25, 1979, and Ruling, June 18, 1979, filed in the Iowa District Court in and for Linn County. Although the defendants were tried as a group, the indictments and motions were made for each one separately. The same motion was filed for each defendant.

79. Morgan, “The Palo 13—A First-hand Account.” Kegel called Futrell’s testimony “impressive.” There is no transcript of the trial, except for a copy of Kegel’s closing argument. A court reporter’s notes are usually transcribed only in the event of an appeal, and, in general, court reporters discard their notes after the deadline for an appeal has passed. That is probably what happened with the notes in this case. The closing argument was transcribed because several people asked Kegel for a copy of it, so he paid the court reporter to transcribe it.

80. Morgan, “The Palo 13—A First-hand Account”; Futrell interview.

another way the defendants expressed their skepticism of hierarchical structures. "We were very aware that the jury was going to decide, and we wanted them to know how much we respected them," explained another defendant.⁸¹

The first defendant took the stand that afternoon: Frank Cordaro—the energetic, charismatic, and indefatigable pillar of the Des Moines Catholic Worker house. Cordaro grew up in an Italian American Catholic family in Des Moines. After graduating from Dowling High School in 1969, he received a football scholarship to the University of Northern Iowa (UNI), where he earned a B.A. in 1973. Cordaro gave no sign of becoming a social justice activist during those years. "I was a real Neanderthal," he later stated. Within a few short years, however, Cordaro was on a new path. While a student at UNI, he had joined the charismatic movement, which changed the way he thought about Catholicism. "[It] made it central to me that Christ and my faith was going to be real," he recalled, not just a cultural identity. Upon graduation, Cordaro entered the Aquinas Institute of Theology in Dubuque to explore the idea of becoming a priest. During the summer after his first year at Aquinas, Cordaro worked in an African American and Puerto Rican parish in the South Bronx. That experience, he later said, "changed my whole life. I came to the conclusion that if the only poor people in the world existed in the Bronx, there were too many. And because I'm a Gospel person, I'm going to spend the rest of my life trying to address those issues." Cordaro lived at a Catholic Worker house in Davenport the following summer and found his calling. Along with a friend, Cordaro opened the first Catholic Worker house in Des Moines in the fall of 1976.⁸²

Direct action is at the heart of the Catholic Worker movement, which responds to the biblical teachings of Jesus in the Sermon on the Mount to perform corporal works of mercy. Catholic Workers live in houses of hospitality where food, clothing, and shelter are offered to those in need. Pacifism is also part of the DNA of the movement; Catholic Workers reject war in any form.

81. Morgan, "The Palo 13—A First-hand Account"; Hagen interview.

82. "A Family Affair: The Cordaros of Des Moines," in *Voices from the Catholic Worker*, ed. Rosalie Riegle Troester (Philadelphia, 1993), 370–90. Cordaro is also profiled in William Strabala and Michael J. Palacek, *Prophets Without Honor: A Requiem for Moral Patriotism* (New York, 2002), 131–38.

Catholic Workers, believing that the current social order is unjust, seek change through personalism, a philosophy that makes individuals, not governments, responsible for justice and charity. "For me," Cordaro explained, direct action "is a faith language."⁸³

Inspired by the Berrigan brothers, Cordaro began participating in acts of civil disobedience to protest America's arms build-up and use of military power around the globe. Prior to his arrest at Palo, Cordaro had been arrested for spilling his blood on the pillars of the Pentagon and for trespassing at the Rocky Flats plutonium facility in Colorado. He served short jail terms for both offenses. "I'm a religious fanatic," he observed. "I believe in Old Testament prophetic energies." As Cordaro came to understand the connection between nuclear power and nuclear weapons, he saw participating in civil disobedience at Palo as another way to "speak truth to the powers that be." An articulate and educated advocate for his faith and his actions, Cordaro was a good choice as the lead witness.⁸⁴

After Cordaro had answered several opening questions, defense attorney Kegel asked him why he had trespassed at Palo. As Cordaro began speaking about the dangers of radiation, the prosecutor objected, stating that the topic was "irrelevant to the charges and could be prejudicial to the jury." The moment of truth had arrived for the defense. Kegel argued that the defendants should be allowed to present information on the dangers of nuclear power because that was the reason they had trespassed at Duane Arnold. Judge Koehler was not persuaded. Noting that the issue of nuclear power was too technical and complex for the jury to sort out, the judge sustained the prosecutor's motion.⁸⁵

83. Frank Cordaro, telephone interview by author, 5/2/2000. On Catholic Worker philosophy, see Mark Zwick and Louise Zwick, *The Catholic Worker Movement: Intellectual and Spiritual Origins* (Mahwah, NJ, 2005); and Mary C. Segers, "Equality and Christian Anarchism: The Political and Social Ideas of the Catholic Worker Movement," *Review of Politics* 40 (1978), 196-230.

84. Cordaro interview. Cordaro made national news in November 1979 when he disrupted President Jimmy Carter's briefing in the East Room of the White House on the SALT II treaty by shouting that the treaty was a "lie" and dumping a bag of ashes on the floor. Photos accompanied most of the articles, including those in the *Washington Post*, *New York Times*, *Detroit News*, and *Des Moines Register* on Friday, November 30, 1979.

85. "Testimony on Nuclear Danger Barred," *Cedar Rapids Gazette*, 6/21/1979; Frank Cordaro, "Baker's Dozen Acquitted," *Via Pacis*, July 1979, 6.

The jury would not hear evidence about the dangers of nuclear power.

The ruling required the defense to shift gears. Kegel had prepared for that possibility and was ready with a new line of argument. The Iowa statute under which the Palo 13 defendants were charged stated that it was a crime to trespass “without justification.” The defendants’ “state of mind,” Kegel argued, was a relevant factor in assessing that justification. The judge agreed. That led to the establishment of a “sort of middle ground” that allowed each defendant to share some information with the jury about why they had trespassed at the Duane Arnold nuclear power plant, albeit in a different and more limited manner than originally planned.⁸⁶

Although the parameters of that middle ground were unclear at first, after the examination of a few defendants (and several conferences in the judge’s chambers), everyone knew what they were. The jurors could hear testimony about the defendants’ previous attempts to voice their concerns on the issue of nuclear power and about the beliefs and feelings that had prompted them to trespass at the Duane Arnold plant. They could *not* hear testimony about the general dangers of nuclear power or the specific dangers of the Duane Arnold facility. Although such testimony was still given as an offer of proof so that it would be part of the record in the event of an appeal, the jury was required to exit the courtroom whenever testimony regarding the dangers of nuclear power was presented. This resulted in the frequent departure and re-entry of the jury – accompanied each time by the rising of the defendants – which, as one defendant observed, gave the Palo 13 “quite a bit of exercise during the course of the trial.” A member of the jury retained a clear memory of the frequent removal of the jury during the trial. “It got so I knew exactly when to reach for my purse,” she recalled.⁸⁷

The judge’s decision was a blow to the defendants – who had believed that making the case against nuclear power in a court of law would serve to educate the general public – but some defendants were buoyed in spirit by the support of a group called

86. Kegel interview.

87. Morgan, “The Palo 13 – A First-hand Account”; Shelby Allgood, telephone interview by author, 4/30/2000.

"Mutants for Nukes" that had marched outside the courthouse that morning. Dressed in colorful costumes, the group chanted, "We need more nukes, the Palo 13 are kooks!" as the defendants and jury members arrived for the trial. As one defendant later wrote, the appearance of the mutants brought a measure of "spontaneity, humor, and elan" to the trial.⁸⁸

Day three of the trial began with testimony on the dangers of nuclear power from two expert witnesses for the defense, sending the jury from the courtroom for most of the morning. Dr. George Bedell, University of Iowa professor of medicine and member of Physicians for Social Responsibility, gave medical testimony on the dangers of radiation to the human body. Skip Laitner of Community Action Research Group spoke about the disregard for environmental safety and citizens' concerns that marked both the nuclear industry and the governmental agencies that regulated it. Although the jury had heard only the credentials and background of these witnesses before they were required to leave, the defense believed that their presence "made a psychological impact on the jury: they knew and understood that something was happening that they weren't being allowed to hear."⁸⁹

Day three ended with the testimony of defendant Steve Marsden, one of Iowa's most relentless activists for social justice and the Palo 13 defendant with the longest history of participating in nonviolent direct action. Marsden, who was raised in Eldora, Iowa, was the eldest defendant at age 31. His activism was rooted in his Methodist faith and spurred by the civil rights and free speech movements of the early 1960s. His first arrest was in 1967 and his second in 1971 — both in protests against the Vietnam War. In 1972 Marsden was arrested for resisting the draft and received a three-year suspended sentence. As a result of his subsequent tax resistance activities, his suspension was later revoked. "[Steve] served nine months in federal penitentiary rather than kill people in Vietnam," his wife stated.⁹⁰

88. "Witnesses: Protesters Warned"; Morgan, "The Palo 13—A First-hand Account."

89. Douglas, "Anti-Nuclear Activists Vindicated"; Kegel interview.

90. Steve Marsden, telephone interview by author, 5/8/2000; Obituary written by Marsden's wife, Rebecca Rosenbaum, in Marsden's funeral program, in author's possession.

After his release from prison, Marsden helped organize the Lincoln–Chicago feeder route of the 1976 Continental Walk for Disarmament and Social Justice, where he met Frank Cordaro and other Iowa pacifists. When the walk was over, Marsden settled in Ames and played a key role in launching *Free Flowing*, a new alternative newspaper. A central figure in left-leaning political activism in Iowa in the mid- to late 1970s, Marsden maintained ties, both official and unofficial, with nearly every social activist group in the state. His main affiliation during that time, however, was with the Iowa Socialist Party.

Founded in the early twentieth century, the Iowa Socialist Party (ISP) had been dormant for many years until Bill Douglas, a graduate student at the University of Iowa, reinvigorated the organization in the late 1970s.⁹¹ Under Douglas's leadership, the ISP built a small but active statewide organization that took the lead in using nonviolent direct action as a protest strategy.⁹² Marsden participated in two civil disobedience actions with other ISP members in the late 1970s. He was arrested at a protest against nuclear weapons at the Rocky Flats plutonium facility in Colorado and at a protest against inhumane prison conditions at the regional office of the Federal Bureau of Prisons in St. Louis.⁹³ For Marsden, therefore, putting his body on the line to protest nuclear power was a natural extension of the work he had been doing for over a decade. In addition, Marsden had been connected to the national anti-nuclear movement for many years through friendships with early leaders of the Clamshell Alliance whom he had met while working with the Liberation News Service in the early 1970s.

By the end of Friday morning, the jury had heard testimony from all 12 defendants regarding their personal background, their previous anti-nuclear work, and their thoughts on March

91. A small local group was active in Grinnell in the early 1970s.

92. Matt Schaeffer and Duncan Stewart, "Still the Iowa Idea: The Resurgence of the Iowa Socialist Party, 1978–1988," unpublished paper presented at the Iowa History Forum, Des Moines, 2000, in author's possession.

93. Palo 13 defendants Frank Cordaro, Joe Marron, Jean Hagen, and Greg Green also attended the demonstration at Rocky Flats, where Cordaro and Marron were arrested with Marsden. Palo 13 defendants Jim Dubert and Joe Marron were also arrested in St. Louis.

24, 1979, as they sat down on the road blocking the entrance to the Duane Arnold plant. Twenty-one-year-old Maggie Gilfoyle, for example, who was born and raised in eastern Iowa, told the jury that she felt a responsibility to protect the earth, which motivated her to trespass at Duane Arnold.⁹⁴

Several defendants spoke of their faith as a key factor in their decision to commit civil disobedience. Jim Dubert, who had grown up on a dairy farm outside Maquoketa, told the jury that he believed it was his responsibility as a Christian to confront evil in the world. Dubert testified that he viewed nuclear power as evil because it was intimately connected to nuclear weapons.⁹⁵ Perhaps the most dramatic testimony about the role of faith came from 22-year-old Lucia Dryanski, who explained that her work as a Catholic Worker helped her overcome feelings of powerlessness in the face of corporate America. Dryanski compared her actions at Palo to those of the Old Testament prophet Ezekiel, who said that a prophet's role is to be a "sentry for the nation" and warn the people of impending destruction.⁹⁶

Several defendants testified about the methods they had used earlier to oppose nuclear power. James Runyon, a member of the Catholic Worker house in Rock Island, Illinois, spoke of his long history of anti-nuclear activism, and Joe Ptak, an undergraduate at the University of Iowa, described his work on a local ordinance banning the transportation of radioactive waste.

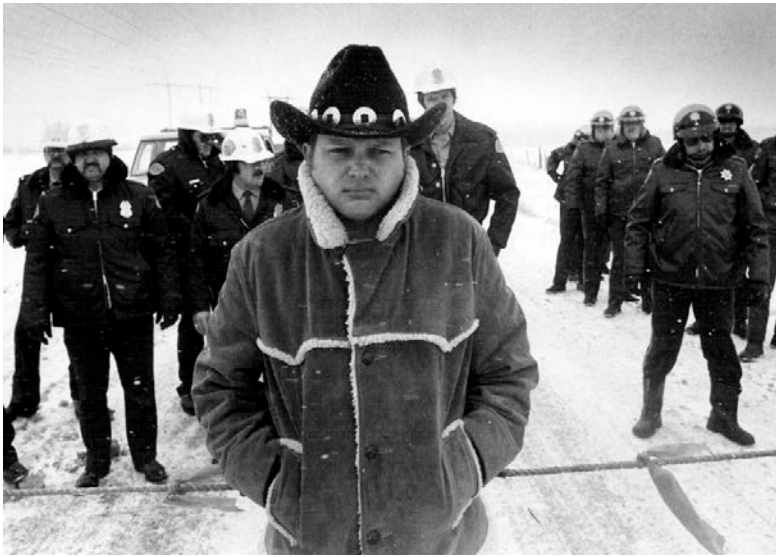
Feminist and ISP member Jean Hagen, a 26-year-old native of Mason City, Iowa, offered a broad view of her personal motivations and influences. Hagen spoke about her experiences on the Continental Walk for Disarmament and Social Justice, the time she spent with Catholic Worker founder Dorothy Day in upstate New York after the walk, her reading of Gandhi, and her understanding of nonviolence. In sum, Hagen told the jury, as far as she was concerned, "Duane Arnold is trespassing on all of *our* lives."⁹⁷

94. Margaret "Maggie" Gilfoyle, telephone interview by author, 7/2/2016.

95. Douglas, "Anti-Nuclear Activists Vindicated."

96. Morgan, "The Palo 13 – A First-hand Account"; Douglas, "Anti-Nuclear Activists Vindicated"; Cordaro, "Baker's Dozen Acquitted."

97. Douglas, "Anti-Nuclear Activists Vindicated"; Hagen interview.



Linn County Sheriff Orlie Workman notifies the Palo 13 that they will be arrested if they cross the rope. Deputies and plant security officials are on hand to make the arrests, as they know that the group will cross the rope. Photo from Des Moines Catholic Worker Photo Archives.

Before the defense rested, it played a short video of the civil disobedience action and arrest at the Duane Arnold plant.⁹⁸ In the early part of the video, the deputies could be heard using vulgar language and making derogatory comments about the protestors. Kegel later said that he thought the “coarse attitude of law enforcement was quite a contrast to the dignified conduct of the defendants.”⁹⁹ To the amusement of the defendants and members of the jury, the video drew an audible laugh from the judge at the sight of Sheriff Orlie Workman in his cowboy hat. The defense felt that the video made a favorable impression on the jury. As defendant Scott Morgan later wrote, “All those peaceful

98. The video was shot by the sheriff’s department. I have not seen it.

99. Jack Kegel, email notes to author, 1/7/2018. The prosecutor had asked the judge to exclude the beginning of the tape, but the judge ruled in favor of the defense, which asked that the tape be shown in its entirety.

folks braving the elements, holding hands, singing . . . too much! The jury was *ours*.”¹⁰⁰

By all accounts, Jack Kegel’s closing argument was nothing short of brilliant, bringing tears to the eyes of the court reporter, members of the jury, and several of the defendants. Skip Laitner, sitting in the audience, described what he saw: “I watched the defendants as Jack made his closing, and they sat up straighter as he talked. It was as if Jack’s presentation of what they had done made them feel really proud.” Defendant Scott Morgan summarized it best. “The tightness of his logic, the clarity of his thought, and the conviction with which he delivered [it] . . . overpowered the jury.”¹⁰¹

The judge had instructed Kegel in chambers not to attempt any jury nullification arguments during his closing, meaning that the judge did not want Kegel to ask the jury to reach a verdict of not guilty by ignoring the law.¹⁰² The warning was not necessary, however, as Kegel intended to argue just the opposite: he wanted the jury to reach a verdict of not guilty by applying the law. Kegel and his co-counsels had begun working on the closing argument that morning over breakfast, but it was not until they received the judge’s instructions for the jury late Friday afternoon that they could finalize it. Kegel had learned the value of using jury instructions to structure the closing argument during his years as a public defender. He explained, “Despite the presumption of innocence, jurors are usually predisposed toward conviction in criminal cases. Using the jury instructions in closing helps neutralize this tendency. . . . In this case, where the defendants had admitted doing everything they were charged with, I thought it was doubly important to show them [the jurors] how they would be following the law by voting for acquittal.”¹⁰³

100. Hagen interview; Kegel interview; Morgan, “The Palo 13—A First-hand Account” (emphasis in original).

101. Laitner interview; Hagen interview; Morgan, “The Palo 13—A First-hand Account.” Kegel credits co-counsels Bob Lang and Marty Knanishu with making significant contributions to the shaping of the closing argument and the selection of the points it included.

102. Kegel interview.

103. Kegel, email notes to author, 1/8/2018.

Prefacing several sections of his closing argument with the words, "As His Honor, Judge Koehler will instruct you," Kegel began by discussing all the ways in which the jurors could assess the credibility of the defendants: their demeanor, their appearance, and their conduct on the stand. He asserted that the defendants had been "thoughtful . . . honest . . . and forthright" in their testimony. He told the jurors that they could consider the defendants' motives, which he characterized as "selfless" and "courageous." He pointed to the reasonable and peaceful way the defendants had planned and carried out their action. He reminded them of all the legal means the defendants had already used to influence nuclear policy.¹⁰⁴

Kegel challenged the jury to "think of the consequences to our entire society, to the future of our race—the human race—if a few courageous people like this didn't take the initiative." Alluding to the accident that had occurred at Three Mile Island, he asked the jury to consider the timing and urgency of the defendants' actions. "Now if there wasn't an immediate threat on that day," he asked, "then what happened four days later in Pennsylvania?"¹⁰⁵

Anticipating the prosecution's rebuttal, Kegel asserted that an acquittal would not change or undermine Iowa's trespass law. "It will still be the same thoughtful humane law that allows, under certain circumstances, an activity that would normally be considered to be a crime, to be justified because of the overwhelming counter-weighting value of the action."¹⁰⁶

In closing, Kegel reminded the jurors of the dangers of nuclear power that had prompted the Palo 13 to take action: the long-term effects of radiation, the unsolved problems of waste storage and disposal, the potential for an accident, and the possibility that terrorists could acquire nuclear materials and create weapons. Given these dangers, Kegel concluded, "I submit to you that these defendants were engaged in the prevention of a crime. . . . Those people had the courage, the foresight, and the integrity to put their bodies between that plant and us. . . . In view

104. "State of Iowa v Runyon et al. — Closing Argument," 3–6, transcript in author's possession.

105. Ibid., 14–15, 6.

106. Ibid., 15.

of that, ladies and gentlemen, you take a look at the words ‘without justification’ in those Instructions, and I submit that the only possible verdict in this case is not guilty.”¹⁰⁷

Shea’s closing, in contrast, lacked both emotional impact and rhetorical eloquence.¹⁰⁸ Ignoring the social and political context, Shea portrayed the defendants’ actions as a simple case of lawlessness. He stated that the defendants had trespassed on private property, that there was no justification for their actions, and that the issue of nuclear power was irrelevant.¹⁰⁹

When the closing arguments were over, Judge Koehler issued his instructions to the jury. The judge defined the crime of criminal trespass and specified the three elements that the prosecutor needed to prove for a finding of guilty: 1) that the defendants had entered and remained on the Duane Arnold property; 2) that the proper authorities had asked them to leave; and 3) that they had no justification for being there. Unless the state proved all three of these elements beyond a reasonable doubt, the judge instructed, “you shall find the defendants not guilty.” The judge provided detailed instructions on what counts as evidence, on what constitutes reasonable doubt, and on what the jury could consider in assessing the credibility of the witnesses, yet he did not offer specific guidance on what constituted “justification” for the defendants’ actions. “You are the sole judges of the weight of the evidence,” he instructed. “You are to determine the defendants’ guilt or innocence from the evidence received and the law as given to you in these instructions.”¹¹⁰

By the time the judge finished, it was 4:30 p.m. on Friday. As Kegel knew, that is typically a bad time for a case to go to a jury. Kegel weighed his options. He could ask the court to adjourn for the day, but he wanted the jury to begin deliberating while his summation was fresh in their minds. Given the late hour, however, he was uncertain. He sought a second opinion: “I looked

107. *Ibid.*, 15, 17.

108. Morgan, “The Palo 13—A First-hand Account.” Morgan’s characterization of Shea’s closing as “wretchedly constructed, pure dead theater” and “irrelevant, immaterial, dull” may be an overstatement but probably captures the essence quite well. Morgan notes that he makes no claims to objectivity, just to accuracy.

109. “Jury Gets Trespass Case,” *Cedar Rapids Gazette*, 6/23/1979.

110. Instruction Nos. 2, 3, 5, 7, 8, 9, 10, and 11, in author’s possession.

back at Marty [an attorney who had assisted with the case], who was sitting in the audience, and I mouthed, 'Jury now?' He emphatically nodded yes."¹¹¹

The jurors deliberated for an hour and a half and went home without reaching a verdict. They reconvened at 10:00 a.m. on Monday. Shortly after noon, they sent word to the judge that they had reached a decision.

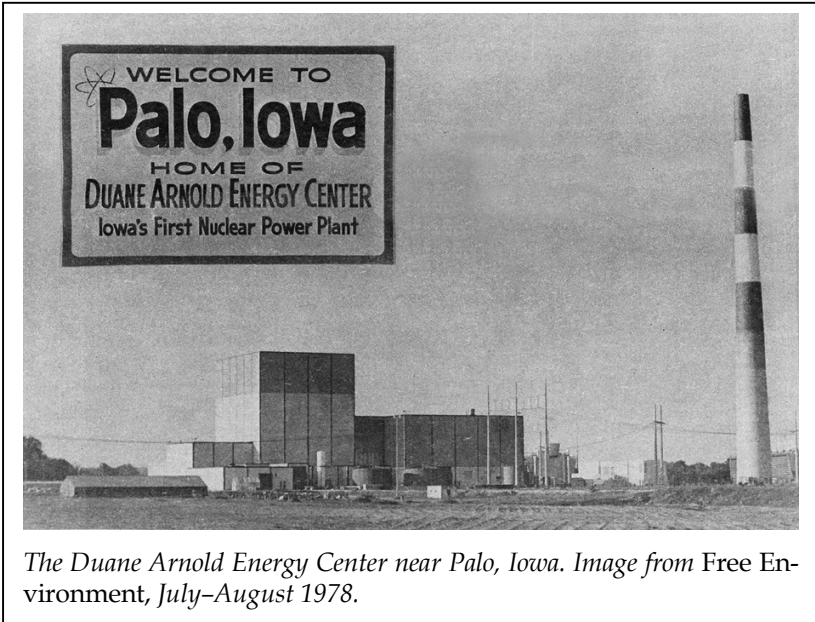
When the not guilty verdict was announced, the defendants leapt to their feet and gave the jury a standing ovation. "Defendants Claim 'People's Victory'" read the headline in the *Cedar Rapids Gazette* that evening. "We were absolutely ecstatic," recalled defendant Maggie Gilfoyle. "I was awash in joy — thinking that we had helped make progress happen." Defendant Jean Hagen remembered how she felt when the verdict was announced: "I really felt it was a victory for the jurors — that they had the gumption to acquit us." From the perspective of jury forewoman Shelby Allgood, "It was a little emotional. . . . We were a bit teary-eyed." Years later, Judge Koehler affirmed the legal soundness of the jury's decision. He would have ruled the same way had it been a bench trial. The Palo 13 "made their case," he said. "They were right."¹¹²

TWO MORE GROUPS OF ACTIVISTS committed civil disobedience at the Duane Arnold Energy Center the following year. Nineteen women who belonged to the Wild Rose Affinity Group of the Iowa Mobilization for Survival, including Palo 13 defendant Jean Hagen, celebrated Mother's Day in 1980 by planting 19 red roses on the grounds of the Duane Arnold nuclear power plant. As their supporters cheered them on, the women were arrested, taken into custody, and released that night on their own recognizance. Two days later, the Linn County Attorney announced that he was not pressing charges because the chances of conviction were "slight."¹¹³ Later that summer, seven people, including Palo

111. Kegel interview.

112. Morgan interview; 'Defendants Claim 'People's Victory,'" *Cedar Rapids Gazette*, 6/25/1979; Gilfoyle interview; Hagen interview; Allgood interview; Koehler interview.

113. "19 Arrested in Mother's Day Palo Protest," *Des Moines Register*, 5/12/1980; "Linn Hearings Set for 19 Women Arrested," *Cedar Rapids Gazette*, 5/12/1980 (with photos on 12B); "No Charges Filed in Palo Protest," *Daily Iowan*, 5/14/1980.



13 defendant Scott Morgan, paddled a canoe down the Cedar River and debarked on Duane Arnold property, where they were arrested and charged with criminal trespass. After a three-day trial in which the judge allowed testimony about the dangers of nuclear power, the jury reached a verdict of not guilty.¹¹⁴

Nearly 40 years would pass before the goal of Iowa's 1970s anti-nuclear protestors became a reality. In July 2018 the owners of the Duane Arnold Energy Center announced plans to close the plant in 2020. Citing the changing economic landscape of energy production and consumption, one of the owners noted that cheaper sources of energy such as natural gas and renewables had played a significant role in the decision to close the plant.¹¹⁵

The life cycle of the Duane Arnold Energy Center mirrors the historical trajectory of the American nuclear power industry.

114. Morgan, "July 6th Task Force Report." This trial also had the distinction of being the first criminal trial in Iowa to be videotaped in its entirety. See *State of Iowa vs "Palo Seven,"* Audiovisual (Videotape 55), Law Library, University of Iowa, Iowa City.

115. "Iowa's Only Nuclear Plant Slated for Shutdown," *Iowa City Press-Citizen*, 7/28/2018.

Early advocates of nuclear power expected it to become the dominant source of electricity in the United States by the end of the twentieth century. That did not occur. Today, 99 nuclear reactors at 61 nuclear power plants—nearly all of them built between 1970 and 1990—produce approximately 20 percent of the electricity used in the United States, a ratio that has remained steady for over 30 years.¹¹⁶ Even before the 1979 accident at Three Mile Island, orders for new nuclear power plants had begun dropping dramatically because of runaway costs, long lead times, regulatory uncertainty, a decline in the demand for electricity, citizen opposition to local plants, and safety concerns raised by an energized environmental movement.¹¹⁷ Although new plants continued to come on line throughout the 1980s (often ten years behind schedule), the most notable trend in the U.S. nuclear industry from the mid-1970s through the 1980s was the cancellation of nuclear power plant orders.¹¹⁸ Following the devastating explosion at the Chernobyl nuclear power plant in Ukraine that killed 50 workers and caused widespread radiation sickness in 1986, there was little appetite in the United States for building more nuclear power plants. Since 1990, just six new nuclear power plants have come on line in the United States. Meanwhile, 34 have been closed and are in various stages of the decommissioning process.¹¹⁹

In the twenty-first century, the nuclear industry seemed poised for a revival. Memories of the accidents at Three Mile Island and Chernobyl had faded, and Presidents George W. Bush and Barack Obama both sought to address the problem of carbon emissions by making nuclear power a key part of their “clean energy”

116. U.S. Energy Information Administration Website, www.eia.gov/tools/faqs/faq.php?id=207&t=3; Nuclear Energy Institute Website, www.nei.org/resources/statistics/us-nuclear-generating-statistics.

117. “A Meltdown for Nuclear Power,” *Business Week*, 1/30/1984; “Nuclear Energy,” *CQ Researcher* 16 (2006), 217–40.

118. More than 100 orders for nuclear power plants were cancelled during this time. “A Meltdown for Nuclear Power”; Wikipedia, s.v. “List of Cancelled Nuclear Reactors in the United States,” https://en.wikipedia.org/wiki/List_of_cancelled_nuclear_reactors_in_the_United_States.

119. Five plants came on line in the 1990s, and the Watts Bar 2 in Tennessee came on line in 2016. Nuclear Energy Institute, “Decommissioning Status for Shutdown U.S. Nuclear Plants,” www.nei.org/resources/statistics/decommissioning-status-for-shutdown-us-plants.

strategy. They increased federal aid to help utilities build nuclear power plants, which led to the approval of four new plants—the first in nearly 30 years. Then disaster struck again: in 2011 a powerful earthquake and tsunami hit Japan, triggering fuel meltdowns and explosions at three reactors at the nuclear power plant in Fukushima, Japan. The accident revived safety concerns in the United States, led to new regulations, and significantly increased the cost of building nuclear power plants.¹²⁰ At the same time, other forms of energy, such as natural gas and renewables, were becoming more economical. Since 2012, manufacturers of nuclear reactors have been withdrawing from the industry, and 14 existing reactors, including the controversial Diablo Canyon plant in California and the Duane Arnold plant in Iowa, have been scheduled to close. Nuclear power continues to play a role in energy production in the United States, but it is not expected to grow anytime soon—if ever.¹²¹

THE UNEXPECTED VERDICT in the Palo 13 case demonstrates how social, political, and cultural factors influence legal outcomes. To begin with, the judge who heard the case influenced the jury's decision. Judge Koehler's flexibility in accommodating the Palo 13's unorthodox courtroom behavior signaled to the jurors that the defendants deserved respect. In addition, his ruling that the defendants' state of mind was relevant allowed the jurors to hear the testimony upon which they based their conclusion. "In our hearts, we felt they did have justification to be there," explained the jury forewoman. "[The defendants] were peaceful. . . . Their sincerity and dedication to the cause was what we really looked at. . . . We felt that they really believed they were saving lives."¹²²

120. "Nuclear Power," *CQ Researcher* 21 (2011), 505–28.

121. "America's Retreat from Atomic Power," *New York Times*, 2/19/2017; Yale Environment 360, "Industry Meltdown: Is the Era of Nuclear Power Coming to an End?" 5/15/2017, <https://e360.yale.edu/features/industry-meltdown-is-era-of-nuclear-power-coming-to-an-end>; "California's Last Nuclear Plant to Close after Unanimous Vote by Regulators," *San Francisco Chronicle*, 1/11/2018; "Iowa's Only Nuclear Plant Slated for Shutdown."

122. "Historic Decision: People's Victory for Palo 12," *Free Environment Newsbriefs*, July 1979; Allgood interview.

The timing of the accident at Three Mile Island (TMI) was also a significant factor in the verdict. The defense team, in fact, believes that the TMI accident was the most significant factor in the acquittal.¹²³ Yet the jury forewoman doesn't remember it that way. "We certainly were aware of it," she recalled, "but I don't remember that it was discussed a lot in the jury room."¹²⁴ While that may be true, it is hard to imagine that TMI did not influence the jury's thinking: the frightening possibilities it raised had made a deep impression on the entire nation, and Kegel's subtle reference to it in his closing argument could have made it easier for the jurors to see a "justification" for the defendants' actions.

The specific time period also shaped the verdict. "People were becoming more aware of things not being black and white. We were aware that the government wasn't always correct," the jury forewoman recalled.¹²⁵ After the Vietnam War, the Watergate cover-up, and the resignation of Richard Nixon, Americans—even white, middle-class, middle-aged midwesterners—no longer trusted the government as a matter of course.¹²⁶

The issue of nuclear power had also become more visible in Cedar Rapids since the arrest of the Palo 13 and the accident at Three Mile Island. On April 21, 1979, the Mobilization for Survival sponsored the largest anti-nuclear rally to date in Iowa. More than one thousand Iowans gathered in downtown Cedar Rapids and marched from Greene Square Park to the Iowa Electric tower to deliver the message that the Duane Arnold plant should be closed. Many of those attending the rally had been prompted by the events at Three Mile Island. One woman told a reporter that it was "obvious that they don't know what in hell they are doing," which made her worry that the Palo plant would become a "radioactive hulk that can't be safely taken down."

123. Jack Kegel, Skip Laitner, Scott Morgan, Jeffrey Morgan, Jean Hagen, and Frank Cordaro all expressed this opinion.

124. Allgood interview.

125. Ibid.

126. Several scholars of the 1970s have identified a lack of trust in government, corporations, and other institutions such as the legal and medical professions as a key trend of the era. See Bruce J. Schulman, *The Seventies: The Great Shift in American Culture, Society, and Politics* (New York, 2001); Peter N. Carroll, *It Seemed Like Nothing Happened* (New York, 1982); and Dominic Sandbrook, *Mad as Hell: The Crisis of the 1970s and the Rise of the Populist Right* (New York, 2011).

Others at the rally expressed concern about the high cost of the plant's repairs, which was being passed on to customers. "I feel the stockholders ought to bear some of that brunt," a World War II veteran told the reporter. The cross section of Iowans who attended the rally demonstrated that concerns about nuclear power were heating up in Cedar Rapids.¹²⁷

The attorneys who handled the case shaped its verdict as well. Defense attorney Jack Kegel brought experience and passion to the task of defending the Palo 13, which gave him a distinct advantage over the prosecutor on both counts. Most significantly, in sharp contrast to the prosecution's strategy, which was to ignore the context of the case and focus on a narrow interpretation of the law, the defense team framed the civil disobedience of the defendants within its social context. Thus, even though the prosecution succeeded in shifting the focus of the trial from the dangers of nuclear power to the actions of the defendants, the defense succeeded in shifting the focus from *what* the defendants had done to *why* and *how* they had done it. Using his skills and experience to good advantage, defense attorney Kegel argued successfully for the establishment of evidentiary boundaries that would allow the jury to adapt the defendants' perspective on their actions. For Kegel, the task then became to "shine the light on [the defendants] . . . and allow the jury to see that they were sincere, well-meaning, and dedicated people."¹²⁸

Clearly he succeeded. When the jurors retired to deliberate, they sifted the evidence through the social, cultural, and political lenses that gave it meaning—and found that the defendants, indeed, had justification to trespass on the property of the Duane Arnold Energy Center. The Palo 13 defendants, the jury determined, had not committed a crime.

127. "All Ages March in Palo Protest," *Daily Iowan*, 4/23/1979.

128. Kegel interview.